



GAO

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Decision

Matter of: Systems Research Group, Inc.

File: B-291855

Date: March 21, 2003

Fredrick V. Garcia for the protester.

Capt. Ronald D. Sullivan, LTC Thomas L. Hong, and Capt. Dan DiPaola, Department of the Army, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that, in connection with the private-sector competition component of an Office of Management and Budget Circular A-76 commercial activities study, contracting agency unreasonably evaluated the protester's proposal as technically unacceptable is denied where the record shows that the agency's evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

Systems Research Group, Inc. (SRG) protests the Department of the Army's determination that its proposal to perform selected requirements at the Army's Directorate of Information Management at Fort Jackson, South Carolina, was technically unacceptable. SRG's proposal responded to request for proposals (RFP) No. DABT60-01-R-3024, which the Army issued in connection with an Office of Management and Budget (OMB) Circular A-76 commercial activities study.

We deny the protest.

The Army issued this solicitation on January 16, 2002 to select a commercial offeror to compete against the government's in-house "most efficient organization" (MEO) pursuant to the procedures of the OMB Circular A-76 cost comparison process.¹ The

¹ The procedures for determining whether the government should perform an activity in-house, or have the activity performed by a contractor, are set forth in Circular A-76 and the Circular's Revised Supplemental Handbook. This protest concerns the
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solicitation, which included requirements for information management/information technology services, administrative services, and video-teleconferencing services, anticipated the award of a cost-plus-fixed-fee contract for the 90-day phase-in period, and a cost-plus-award-fee contract for the base and option years.

The Army planned to select the technically acceptable offer with the lowest most probable cost, determined by a cost realism analysis, to compare with the MEO. RFP § M, at 71. A source selection evaluation board (SSEB) was to evaluate proposals against four factors—technical, management, past performance/past experience, and cost—in order to make its selection decision. Id. The successful offeror's proposal must have received an overall rating of technically acceptable considering all evaluation factors other than cost; the RFP stated that the technical factor was more important than the management and past performance/past experience factors. Id. at 72.

SRG's protest is limited to the agency's evaluation of its proposal under the technical factor, which was comprised of five subfactors: phase-in plan, staffing plan, technical approach, work scheduling, and quality control. The RFP stated that the staffing plan and technical approach subfactors were the most important subfactors, and that all other subfactors were of relatively equal importance. Id. The overall rating was to be unacceptable if the proposal was rated unacceptable under either of these two subfactors. Id.

Four of the seven offers submitted were included in the competitive range. The contracting officer forwarded written discussion questions to each competitive range offeror, including SRG, and the SSEB evaluated offerors' proposal revisions. The proposals submitted by Communications Technologies, Inc. (COMTek) and another firm were found to be technically acceptable, with COMTek offering the lowest MPC of \$14,295,056.² The proposals submitted by SRG and the fourth offeror were found to be technically unacceptable and, as a result, the agency did not further analyze SRG's proposed cost of \$7,994,824.

The SSEB found SRG's proposal technically unacceptable based upon its unacceptable ratings under the technical and management factors.³ These ratings

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competition among private-sector firms to be selected for comparison with the MEO; such a competition is conducted much as any competitive federal procurement is conducted.

² The independent government cost estimate was just over \$18 million.

³ SRG's proposal received an initial rating of marginal under the past performance/past experience factor. SRG does not challenge this initial rating or its final rating of unacceptable under the management factor.

were based, in turn, upon SRG's final ratings of unacceptable under four of the five technical subfactors, and under one of the three management subfactors. The SSEB's final evaluation report indicates that the SSEB believed SRG's responses to its discussion questions were "mixed," that some of the firm's answers were incomplete or did not fully address the question, and that, as discussed below, SRG failed to provide a "complete, legible" work breakdown structure (WBS). Final SSEB Evaluation Report at 2. Based upon the SSEB's findings, the contracting officer recommended the selection of COMTek's offer for comparison with the MEO, and the source selection authority concurred on November 4. SRG was notified of this decision by letter dated November 13, the same day the Army determined that the cost comparison between COMTek's offer and the MEO resulted in a tentative decision that performance be accomplished in-house. SRG subsequently filed this post-debriefing protest challenging the reasonableness of the Army's evaluation of its proposal under the phase-in, staffing plan, and technical approach subfactors.

It is not the function of this Office to evaluate technical proposals de novo; rather, in reviewing a protest against an allegedly improper evaluation, we will examine the record only to determine whether the agency's judgment was reasonable and consistent with the stated evaluation factors. J&E Assocs., Inc., B-278187, Jan. 5, 1998, 98-1 CPD ¶ 42 at 2-3. The protester's disagreement with the agency does not render the evaluation unreasonable. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Our review of the record shows that the agency reasonably evaluated SRG's proposal as technically unacceptable.

Each offeror was required to include a section concerning its technical approach, including a staffing plan, in the technical volume of its proposal. This information was to be evaluated under the staffing plan and technical approach subfactors. The staffing plan was required to clearly depict the total number of productive staff hours and associated full-time equivalents for each proposed labor category, and to clearly explain and depict all cross-utilization of the labor force. RFP § L, at 65. Offerors were required to address task requirements to the third level of the WBS/PWS, and to clearly and fully demonstrate a thorough understanding of the requirements to accomplish the effort. Id.

In evaluating proposals under the staffing plan subfactor, the agency was required to answer the question, "Does the offeror provide a clear and easily understood staffing plan that provides sufficient detail to determine that the offeror can provide a sufficiently skilled and adequate work force (including any cross-utilization of personnel proposed) to perform all the requirements, including workload surges and after duty hours requirements?" RFP § M, at 72. In evaluating proposals under the technical approach subfactor, the agency was required to answer the questions, "Does the offeror provide an adequate description of each functional area including the identification of major work processes, process interfaces, and the outputs of these processes?" and "Does the offeror's technical approach ensure efficient, quality, and timely performance?" Id.

The SSEB's final evaluation report shows that the Army found three major unacceptable areas in SRG's proposal under the staffing plan subfactor. First, the SSEB found that SRG did not provide a WBS and that, as a result, the SSEB could not determine whether all of the workload could be accomplished by the staff proposed by SRG. Final SSEB Evaluation Report at 2. Second, the SSEB was concerned with the size and distribution of full-time equivalents within SRG's organization, and found that the number of staff proposed was "very lean"; according to the SSEB, "with the small amount of information provided," it appeared that some functions were overstaffed and other functions were understaffed. Id. Third, the SSEB found that SRG did not provide a cross-utilization plan. Id. The SSEB's final evaluation report shows that SRG's proposal was found unacceptable under the technical approach subfactor because SRG did not provide a WBS and, as a result, the SSEB could not determine if the firm had an acceptable technical approach. Id.

SRG argues that it did include a WBS in its technical proposal⁴ and alleges that the SSEB failed to read this information. The section of the proposal to which SRG refers goes through each major paragraph and subparagraph of the PWS to describe how the firm will meet the requirements. At the end of the discussion of each major paragraph, a table lists each subparagraph, a corresponding performance standard, a corresponding position title for the individual proposed to perform the task, and a corresponding number of task hours. See, e.g., SRG Proposal at III-57, III-58.

While the SSEB's final evaluation report states in several places that SRG submitted "no WBS," the summary of the SSEB's findings in that same document clarifies that the SSEB's view in fact was that SRG did not submit a "complete" WBS. Final SSEB Evaluation Report at 2; see also Pre-Negotiation Objective Memorandum at 4. As the agency explains, it is more accurate to say that the SSEB did not believe that the WBS SRG submitted contained complete information, and "the absence of skill level information rendered any WBS information contained in SRG's proposal meaningless." SSEB Chair's Mar. 7, 2003 Memorandum at 1. Specifically, the Army explains that a WBS permits an offeror to demonstrate its ability to comply with the requirements and perform the individual tasks set forth in the PWS. To successfully make this demonstration, a WBS must break tasks down to the appropriate level and identify the labor category performing each task, the skill level of that labor

⁴ SRG also argues that it provided a more detailed WBS in its cost proposal. However, consistent with the RFP's instruction that offerors not include cost information in the technical or management volumes of their proposals, RFP § L, at 63, 64, the Army cautioned SRG in its written letter transmitting discussion questions to "[b]ear in mind that the SSEB does not see the cost proposal." SRG Discussions Letter at 1. The SSEB did not review offerors' cost proposals--the cost realism analyses were conducted by separate cost analysts--and could not have considered any information therein. In any event, the WBS provided in SRG's cost proposal is also missing the information of concern to the SSEB.

category, and the amount of time it will take to perform each task. If any one of these pieces of information is missing, the offeror has failed to demonstrate its ability to comply with the requirements. Here, the SSEB found SRG's WBS to be incomplete because, while it listed its labor categories by way of its unique position titles, it did not describe the skill level of the labor categories proposed to perform the tasks. As a result, the SSEB could not conclude that SRG's proposed labor categories had the requisite skills.

The solicitation put offerors on notice of the importance of submitting information about the skill levels of proposed labor categories. Section M of the RFP stated that proposals would be evaluated to ascertain whether an offeror could provide a "sufficiently skilled and adequate workforce" (under the staffing plan subfactor) and whether an offeror's technical approach ensured "efficient, quality, and timely performance" (under the technical approach subfactor). RFP § M, at 72. Moreover, during discussions, SRG was put on notice of the agency's difficulty in ascertaining the skill levels of its proposed positions, and of a way to easily satisfy the agency's requirements. The firm was asked to provide Department of Labor (DOL) occupations and grade levels for all of the proposed non-exempt positions⁵ and advised that "[t]he requirement of the solicitation in Section L is you may either use all DOL Labor categories for your proposal or provide a cross-walk between your labor categories and the DOL Labor Categories." Discussion Questions Letter encl. No. 1.

SRG's response did not comply with these instructions. First, the firm stated, without any substantive support, that all of its proposed positions were exempt from the SCA. Second, instead of giving the SSEB what was required—position titles that corresponded with the wage determination's labor categories or a crosswalk between those labor categories and its own—SRG chose to provide a crosswalk between its proposed labor categories and an entirely different set of labor

⁵ Because this procurement is for services, it is subject to the Service Contract Act of 1965 (SCA), 41 U.S.C. §§ 351-358 (2000). Pursuant to this Act and the implementing provisions of the Federal Acquisition Regulation (FAR), the contracting officer notified DOL of the agency's intent to award a service contract and of the list of all the classes of workers the contractor was expected to employ. Based upon this information, DOL provided a wage determination that was included as an attachment to this solicitation. The RFP required offerors to pay employees who were not exempt from the SCA at least the minimum hourly wages as set forth in the applicable wage determination. RFP § L, at 63; FAR § 52.222-41(c). Employees may be exempt from the SCA if they are employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. Part 541. FAR § 22.1001. The RFP required offerors to identify whether each staffing position was exempt or non-exempt and the level and title of the labor category for non-exempt categories. RFP § L, at 63.

categories taken from the federal government's general schedule wage system. SRG Proposal Revisions Question 14. Since the SSEB believed that most of the labor categories required by the contract were subject to the SCA, and were set forth in the wage determination,⁶ it was using DOL guidance associated with the wage determination's labor categories to evaluate the skill levels of proposed labor categories. Since SRG did not provide the requested crosswalk to these categories, did not provide any narrative explanation of the skill levels of its proposed labor categories, did not include any information in its proposal to permit the agency to compare the skill levels of its labor categories with those in the wage determination, and did not provide any rationale to support its view that all of its employees were exempt from the SCA, the SSEB could not ascertain the skill levels of SRG's proposed labor categories. Given the importance of this information as described in the RFP's evaluation criteria for the staffing plan and technical approach subfactors, we cannot conclude that the SSEB unreasonably found SRG's proposal unacceptable under either subfactor.⁷

The RFP also required each offeror to include a section on its phase-in plan in the technical volume of its proposal. This information was to be evaluated under the phase-in plan subfactor against two questions: "Does the Phase-In Plan demonstrate a thorough and clear plan for phase-in with a high probability for success?" and "Does the offeror present an adequate plan for recruiting and retaining the required staffing level, to include key personnel, necessary to provide complete contractual support from phase-in through expiration of the contract?" RFP § M, at 72.

The agency's conclusion that SRG's proposal was unacceptable under this subfactor focused on three major areas, two of which concerned the fact that "Six Sigma," a quality improvement methodology, was an "integral" part of the firm's way of doing business. SRG Proposal at III-2. First, the SSEB found that SRG's phase-in plan did not adequately describe how the development and accreditation of the firm's Six Sigma software could occur by the contract start date. Second, the SSEB was concerned that, while Six Sigma was the framework for SRG's contract performance, the firm's proposal did not emphasize employee training in Six Sigma prior to the contract start date. Third, the SSEB found that the proposed pay levels for most positions in SRG's proposal were so low that they would prevent SRG from hiring

⁶ The agency has provided extensive analysis in support of its view that most of the positions required by the contract are non-exempt, and covered by such wage determination categories as administrative support and clerical occupations and automated data processing occupations. SRG has not rebutted this analysis.

⁷ SRG has not rebutted the third basis for the SSEB's finding that its proposal was unacceptable under the staffing plan subfactor—that the firm did not provide a cross-utilization plan.

qualified personnel, especially the government employees who were currently paid considerably more and had the skills necessary for a smooth transition.

Citing the first criticism, SRG argues that there is no reason that the subject of the development and accreditation of its Six Sigma software should be discussed in the phase-in plan because Six Sigma is a quality assurance process. SRG asserts that “[a]nyone familiar with software development would understand that the proposed phase-in period simply does not allow sufficient time for any meaningful software development.” SRG Protest at 4. SRG states that it provided ample information regarding its Six Sigma methodology in the quality control portion of its proposal, and alleges that the SSEB did not read this information when evaluating its proposal.

SRG misunderstands the nature of the Army’s concern. The SSEB reviewed the quality control section of SRG’s proposal and rated it acceptable. The SSEB’s concern about SRG’s Six Sigma methodology was associated with the question whether, given the firm’s reliance on the Six Sigma methodology to achieve success in this effort, SRG’s phase-in plan demonstrated a “thorough and clear plan for phase-in with a high probability for success.” RFP § M, at 72. This concern arose upon review of SRG’s responses to several discussion questions.

SRG was asked if it could use Fort Jackson’s help desk software for the data gathering process associated with its quality control plan, and if its proposal included the cost of any specialized software and necessary modules. In its revised proposal, SRG stated that it did plan to use the government’s help desk software for the data gathering process and would import its information into proprietary SRG-developed Six Sigma tracking databases. SRG Proposal Revision Question 6. SRG explained that the specialized software used to support the quality assurance and Six Sigma methodology for the effort was a subset of that used by SRG for all contracts; that this software would be developed during the contract transition period; and that the transition costs reflected the programming time required to capture and integrate the various data collection subsystems. SRG Proposal Revision Question 11. SRG stated that there was a “close relationship” between the primary data gathering software owned by the government and the SRG-developed Six Sigma software and that, for this reason, SRG envisioned that its Six Sigma software would operate on a government-supplied computer on the Fort Jackson network within the firewall boundaries. Id.

Based on these responses, the SSEB found that SRG contemplated a measure of software development during the transition period that was not adequately explained in its proposal, and that this inadequate explanation raised doubts about SRG’s probability for success in this effort. Specifically, the SSEB was concerned that SRG’s proposal to import information from government-owned software into SRG-developed proprietary Six Sigma databases on government-furnished equipment raised security accreditation issues. Software must be accredited before it can be installed on a government computer, and SRG’s mere assumption that the software would operate on the government’s computer system was unaccompanied by any

detail, assurance, or plan concerning its passage through the government's accreditation process. This unsupported assumption led the SSEB to conclude that there was a "high probability" that SRG's phase-in plan would not be accomplished. Final SSEB Report at 2. The SSEB also concluded that SRG had not addressed the issue of ownership of the software since, even if SRG's software was accredited by the start of the contract, once it was installed on a government system, the software and the data it extracted and processed would become government property. Id. SRG has given us no basis to question the agency's judgment that these omissions in its proposal compromised its ability to demonstrate that its phase-in plan had a high probability for success.

We do not agree with SRG that the Army failed to advise the firm during discussions that there was a risk associated with its Six Sigma implementation. When an agency engages in discussions with an offeror, such discussions must be meaningful. Shaw Infrastructure, Inc., B-291121, Nov. 19, 2002, 2002 CPD ¶ 9 at 7. For discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Ryan Assocs., Inc., B-274194 et al., Nov. 26, 1996, 97-1 CPD ¶ 2 at 6. This does not mean that offerors are entitled to all-encompassing discussions; agencies are only required to lead offerors into areas of their proposals that require amplification. Id.

One of the Army's concerns with SRG's Six Sigma methodology was that, despite the fact that Six Sigma was the framework for SRG's contract performance, the firm failed to emphasize how its employees would be trained in Six Sigma before the commencement of the contract. During discussions, SRG was asked why Six Sigma training was to be given to employees after the start of the contract and whether this approach would affect contract performance; SRG was also asked when all employees, including any incumbent government personnel it hired, would be expected to be fully cognizant of the Six Sigma process. Both of these questions adequately highlighted the agency's concern that SRG might not be able to effectively implement its Six Sigma methodology, which was the cornerstone of its approach.⁸

Finally, we are unpersuaded by SRG's assertion that its responses to these questions should have mitigated any risk in its phase-in plan. As the SSEB noted in its final evaluation report, the firm did not explain how incumbent-government-employees would receive Six Sigma training by the contract start date, and did not elaborate on how Six Sigma training would be accomplished. Final SSEB Evaluation Report at 2.

⁸ As noted above, the Army's concerns associated with the development and accreditation of SRG's software first arose upon review of SRG's proposal revisions. Since this information was first introduced in the revised proposal, the agency was not required to reopen discussions to obtain the firm's further input. Id. at 7.

SRG has given us no basis to find the agency's concerns unreasonable, and no basis to question the agency's conclusion that its proposal was unacceptable under the phase-in subfactor.⁹

In sum, the record shows that SRG's proposal was rated unacceptable under the overall management factor--a rating which SRG does not challenge--as well as under four of the five subfactors which comprised the technical factor. SRG does not challenge its rating under one of those four subfactors, and, as discussed above, the record clearly supports the agency's conclusion that SRG's proposal was unacceptable under the remaining three factors (phase-in plan, staffing plan, and technical approach). Since the RFP specifically stated that a proposal must be rated unacceptable overall if it received an unacceptable rating under either the staffing plan or technical approach subfactors, the agency's conclusion that SRG's proposal was unacceptable clearly was reasonable and consistent with the terms of the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁹ SRG has not rebutted the third basis for the SSEB's finding that its proposal was unacceptable under the phase-in subfactor--that the proposed pay levels for most positions in its proposal were so low that they would prevent the firm from hiring the qualified personnel necessary for a smooth transition. In addition, SRG has not challenged its unacceptable rating under the work scheduling subfactor, which was associated with deficiencies in its phase-in plan.